

TITLE	Member Code of Conduct Procedures
FOR CONSIDERATION BY	Standards Committee on 14 March 2017
WARD	None Specific
LEAD OFFICER	Andrew Moulton, Head of Governance and Improvement Services and Monitoring Officer

OUTCOME / BENEFITS TO THE COMMUNITY

The Code of Conduct and the associated training for Members help to promote the highest standards of conduct by elected Members on the Borough, Town and Parish Councils. This provides reassurance for residents that elected Members are acting in the public interest and are accountable for their actions.

RECOMMENDATION

The Committee is requested to:

- 1) Consider and approve the three recommendations set out in the report;
- 2) Refer the proposed Constitutional changes to the Constitution Review Working Group for consideration.

SUMMARY OF REPORT

At its meeting on 10 January 2017 the Committee considered a report which set out a request for a change to the Constitution in relation to the “informal” resolution of Code of Conduct complaints. The report referred to the current situation when a Member was found to be in breach of the Code of Conduct but the Monitoring Officer decided to handle the matter informally. In such instances the name of the Member concerned was not currently made public.

Members asked for a further report on this matter together with potential guidelines to assist the Monitoring Officer, in consultation with the Chairman of the Standards Committee and an Independent Person, in making an initial decision on Code of Conduct complaints.

The report also considers issues relating to the recent increase in complaints by Members against other Members and provides evidence relating to the handling of such complaints by other Councils.

Background

At the last Committee meeting, on 10 January 2017, Members asked for a report to address the following issues:

1. The potential for amending the current 'informal' complaints resolution process to include two options – one option with publication of the Member's name and one without publication.(para. 9.1.14.2(a);
2. Potential guidelines to support the Monitoring Officer in handling Code of Conduct complaints;
3. Examples of good practice on Code of Conduct issues from other local authorities - whether other councils have arrangements which prevent a Councillor making a Code of conduct complaint against another Councillor.

Each of the issues is considered in detail below.

1. Publishing the Member's name after a formal investigation finds a breach has occurred

The Committee was requested to consider whether there was a potential anomaly in the complaints process, in that if an investigation finds a Subject Member in breach of the Code of Conduct, and the Monitoring Officer makes a decision to deal with it informally, rather than organise a hearing, that Subject Member's name is not published.

Some Members were concerned that if the Subject Member was found in breach of the Code after a formal investigation, the Subject Member's name should be published, in exactly the same way as if a Hearings Panel had made the same decision. It was felt that there should be the same level of openness for any Subject Member found in breach of the Code of Conduct.

At the previous meeting some Members also favoured a half-way process, so that a decision could or could not be published depending upon the circumstances. However, it is felt that this would create uncertainty and, possibly, confusion, as all decisions should follow a consistent pattern and it could be difficult to pinpoint circumstances when a breach should be published or not. In addition, it should be noted that there is an opportunity for the matter to be dealt with informally when the Monitoring Officer makes his initial decision in accordance with para. 9.1.13.4. at the very beginning of the complaints process. He is likely to have done that if the complaint was considered minor, and for minor breaches it would appear to be appropriate to deal with the matter informally. If the matter is more serious, he will ask for an investigation. It would follow, therefore, that there is an argument for a simple rule that if a Subject Member is found to be in breach of the Code for a relatively serious matter, his or her name should be published as if the matter had gone through a formal Hearings Panel process.

Recommendation: That the sentence at para. 9.1.14.2, which states that a Subject Member's name will not be disclosed, be amended as follows:

Where there has been a determination by the Monitoring Officer to resolve the matter informally, the Subject Member's name will be disclosed in accordance with Para. 9.1.16.3, except that a formal decision notice will be prepared in consultation with the Chairman of the Standards Committee.

2. Potential guidelines to support the Monitoring Officer's initial decision

At the last meeting, Members discussed whether there should be guidelines to help the Monitoring Officer, in consultation with the Independent Person and Chairman of the Standards Committee, to make an initial decision (Para. 9.1.13.4). The following guidelines are the same as used by the Royal Borough of Windsor and Maidenhead, and Members are asked to consider whether they would like this added to the complaints process section of the Constitution. The wording is as follows:

The purpose of the initial assessment by the Monitoring Officer, in consultation with an Independent Person and Chairman of the Standards Committee, is to determine whether the complaint should be accepted for further consideration or rejected. In determining whether a complaint should proceed the Monitoring Officer may apply the following criteria:

- ☐ *Sufficiency of information – Is there sufficient information or evidence provided with the allegation? If it appears that substantiating evidence may be available, but has not been provided, the Monitoring Officer may ask for additional evidence, but the onus is on the complainant to ensure that all relevant information is provided.*
- ☐ *Seriousness of the complaint – is the complaint trivial, vexatious, malicious, politically motivated, or 'tit for tat'? Would the resources/cost involved in investigating and determining the complaint be disproportionate to the allegation if proven?*
- ☐ *Duplication – Is the complaint substantially similar to a previous allegation or subject of an investigation by another relevant authority?*
- ☐ *Length of time – Did the events or behaviour to which the complaint relates take place more than six months prior to receipt of the complaint. Does the time lapse mean that those involved are unlikely to remember matters clearly, or does the lapse of time mean that there would be little benefit in taking action.*
- ☐ *Public Interest – Is the public interest served in referring the complaint further. Has the Subject Member offered an apology or other remedial action?*

It can be seen that the guidance provides a more open system for everyone to see, to back up the Monitoring Officer's decision at the initial stage of the complaint. This is particularly useful when the Monitoring Officer makes a decision that a particular complaint is minor, or where the system is being used on a politically motivated basis, or 'tit for tat'.

Recommendation: That the guidance for the Monitoring Officer's initial decision, as worded above, be added to Para. 9.1.13.4 of the Constitution

3. Preventing a Member complaining about another Member

At the last meeting there was some discussion about cutting down the number of complaints by adding a rule that Members could not complain about other Members. Some complaints may be politically motivated and lack substance. After researching the issue with regard to similar rules used by other Councils, it was found that as far as we are aware, no other Council has this rule. Further, after some discussion with other

legal staff, there was concern that the rule may not be good practice in terms of ensuring the good governance of the authority, since not all complaints are politically motivated, and indeed just because a Member complains about another Member, it does not follow that there isn't an element of seriousness in the complaint. Accordingly, it was felt that the guidance above would ensure that any politically motivated complaint could be dealt with by the Monitoring Officer at the initial decision stage.

Recommendation: That the Code of Conduct complaints process should be open to everyone, including Members.

FINANCIAL IMPLICATIONS OF THE RECOMMENDATION

The Council faces severe financial challenges over the coming years as a result of the austerity measures implemented by the Government and subsequent reductions to public sector funding. It is estimated that Wokingham Borough Council will be required to make budget reductions in excess of £20m over the next three years and all Executive decisions should be made in this context.

	How much will it Cost/ (Save)	Is there sufficient funding – if not quantify the Shortfall	Revenue or Capital?
Current Financial Year (Year 1)	N/A	N/A	N/A
Next Financial Year (Year 2)	N/A	N/A	N/A
Following Financial Year (Year 3)	N/A	N/A	N/A

Other financial information relevant to the Recommendation/Decision

None

Cross-Council Implications

Promoting high standards of conduct for elected Members across the Borough.

List of Background Papers

None

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